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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/660,156	09/11/2003	Paul Allen Tones	TCC/18	4957
26875	7590	12/27/2005	EXAMINER	
WOOD, HERRON & EVANS, LLP			NGUYEN, CHI Q	
2700 CAREW TOWER			ART UNIT	
441 VINE STREET			PAPER NUMBER	
CINCINNATI, OH 45202			3635	

DATE MAILED: 12/27/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/660,156	Applicant(s) TOMES, PAUL ALLEN	
	Examiner Chi Q. Nguyen	Art Unit 3635	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 03 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11 September 2003.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) 17-31 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-16 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 11 September 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>12/10/2004</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

Restriction to one of the following inventions is required under 35 U.S.C. 121.

I. Claims 1-16, drawn to apparatus of an insulated water control panel, classified in class 52, subclass 169.5.

II. Claims 17-26, drawn to an apparatus of a brick wall structure, classified in class 52, subclass 405.1.

III. Claims 27-31, drawn to a method of controlling water through weep holes, classified in class 741.1.

The inventions I and II are related as combination and subcombination. Inventions in this relationship are distinct if it can be shown that (1) the combination as claimed does not require the particulars of the subcombination as claimed for patentability, and (2) that the subcombination has utility by itself or in other combination. In the instant case, the combination as claimed does not require the particulars of the subcombination as claimed because weep holes could be use flashing panel to drain fluid from the wall.

The inventions I and III are related as product and process of use. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different process of using that product. In the instant case the method of controlling water flow weep holes in course of bricks could be use panel, which having a plurality of drainage channels that drain water to a PCV pipe which lead water from the channels to outside of the wall.

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purpose as indicated is proper.

A telephone call was made to request an oral election on 12/13/20045, and the applicant's attorney Mr. David Stallard elected group I (claims 1-16) without traverse for prosecution.

Drawings

The drawings are objected to because in figure 3, the vertical groove should be numeral labeled 52 as described in the specification, page 7, line 10. Corrected

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drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Specification

The applicant is advised to remove "WALL CAVITY DRAIN PANEL" in the abstract of the disclosure.

Claim Objections

Claim 4 is objected to because of the following informalities: the cited limitation "said fabric and said matrix is fixed to said member at said grooved face" should be read as "said fabric and said matrix are fixed to said member at said grooved face". Appropriate correction is required.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 14 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In regard claim 14, the cited limitation "wherein said matrix extends away from said outer face from a position inwardly of said lower edge" is confusing because in the drawings of figure 3 clearly shown that the matrix 66 is extending outward and bent upwardly. Clarification is required.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-3 and 10-12, 14-15 are rejected under 35 U.S.C. 102(e) as being anticipated by Brunson (US 6,684,579).

In regard claims 1, and 10, Brunson teaches drainage mat and mortar blocker comprising a member of insulating material 2 made out of expanded polystyrene foam insulation board (col. 3, lines 58-60) having at least a lower edge 11; a water-permeable fabric 18 disposed on one side of said member and extensible beyond said lower edge

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(col. 3, lines 47-49); a matrix 4 attached to said fabric extensible beyond said edge of said panel member (see figure 1). The matrix 4 having a plurality of holes 10 thus water permeability.

In regard claim 2, Brunson teaches the claimed invention as stated; wherein said matrix is flexible (col. 3, line 31).

In regard claim 3, Brunson teaches the claimed invention as stated; wherein said matrix and the fabric to which it is attached comprise a flexible laminate (figure 1 and col. 3, lines 39-40).

In regard claim 11, Brunson teaches the claimed invention as stated; wherein the fabric is inherently flexible and the matrix is flexible (see above rejection of claim 2).

In regard claim 12, Brunson teaches the claimed invention as stated; wherein said fabric 18 is affixed to the matrix 4 and thus the fabric and the matrix are fixed to an outer of said member 2.

In regard claim 14, as best understood the Brunson teaches the claimed invention as stated; wherein the matrix 4 is extending outward and bent upwardly from the lower edge (see figure 1).

In regard claim 15, Brunson teaches the claimed invention as stated; wherein the matrix 4 is parallel to and spaced from said member 2. The examiner would like to point out that the claimed limitation does not positively drawn to a combination of a course of bricks; therefore any limitation in related to the course of bricks will not given any patentable weight. However, Brunson teaches the same device as the applicant's

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invention, thus it would have been capable of performing the same function such as placing the device along the lower course of bricks, etc.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 5-9, and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brunson.

In regard claims 5, 6, Brunson teaches the claimed invention as stated except for specifically teach wherein said fabric is a spun bond non-woven fabric and said matrix is a filamentous fabric thicker than said water permeable fabric. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have such particular material, e.g. spun bond non-woven fabric and filamentous fabric thicker than said water permeable fabric, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. The motivation for doing this would have been to maximize the drainage and preventing the water penetration and damage to wall structures.

In regard claim 7, Brunson teaches the claimed invention as stated; wherein said matrix having a plurality of holes 10 thus water permeable.

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In regard claim 8, Brunson teaches the claimed invention as stated including the fabric is affixed to matrix by an adhesive (col. 3, lines 39-40). However, Brunson does not specifically teach said matrix is heat bonded to said water permeable fabric would have been considered as method of forming a device and thus not germane to the issue of patentability of the device itself. Therefore, this limitation has not been given patentable weight.

In regard claims 9 and 16, Brunson teaches the claimed invention as stated except for specifically teach wherein said fabric has one face fixed to an outer face of said member. The examiner would take a position that although the prior art does not specifically teach the fabric has one face fixed to an outer face of said member, however, it would have been an obvious matter of functional equivalent because the fabric is water permeable and it will drain water through the matrix, the channel and the weep holes of the course of bricks.

Claims 4, 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brunson in view of Healy (US 3,654,765).

In regard claims 4, 13, Brunson teaches the claimed invention as stated. However, Brunson does not teach specifically the insulating member has grooves comprising water passages and said fabric and said matrix are fixed to said member at said grooved face. Healy teaches subterranean wall drain, which including a member 26 having groove 30 comprising water passage (see figure 2). At the time of the invention, it would have been obvious to one having an ordinary skill in the art to modify Brunson insulating member having grooves as taught by Healy. The motivation for doing so

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would have been to provide water passage for the member thus enhancing quicker drainage through the channel.

Conclusion


The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Mantarro, Raidt, Freese, Sowinski, Irving, Coulton, Crookston, Collins, and Healy teach drainage panel.

Any inquiry concerning this communication or earlier communication from the examiner should be directed to Chi Q. Nguyen whose telephone number is (571) 272-6847, Mon-Thu (7:00-5:30), Fridays off or examiner's supervisor, Carl Friedman can be reached at (571) 272-6842. The examiner's right fax number is (571) 273-6847.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pairdirect.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at (866) 217-9197.

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